

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

William Wisser

Plaintiff,

- against -

The Points Guy, LLC

Defendant.

Docket No. 18-cv-2312

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff William Wisser (“Wisser” or “Plaintiff”) by and through her undersigned counsel, as and for her Complaint against Defendant The Points Guy, LLC (“TPG” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph. The photograph is owned and registered by Wisser, a Florida-based professional photographer. Accordingly, Plaintiff seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides and transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Wisser is a professional photojournalist in the business of licensing his Photograph for a fee, having a usual place of business at 565 NW 44th Street, Miami, Florida 33127-2656.

6. Upon information and belief, TPG is a foreign limited liability company duly organized and existing under the laws of Delaware with a place of business in the judicial district located at 251 Park Ave S, New York, NY 10010.

7. Upon information and belief, at all times material hereto, Defendant has owned, controlled and operated the website at the URL: <https://thepointsguy.com> (the “Website”).

8. The Website is an interactive customer website that offers travel deals, advice, and direct shopping to its customers.

9. TPG is a for-profit entity.

10. TPG, on the Website, publishes information on travel locations and events around the world with substantial advertising throughout the Website.

11. TPG, on the Website states that the Website “contains references to products from one or more of our advertisers,” and “the credit card offers that appear on the website are from credit card companies from which [TPG] receives compensation.”

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

12. Wisser photographed an image of the restaurant PB Station in Miami (“the Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

13. Wisser is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

14. The Photograph was registered with the U.S. Copyright Office and was given Copyright Registration Number VA 2-067-039, effective as of July 25, 2017.

B. Defendant's Infringing Activities

15. On September 20, 2016, TPG posted the Photograph on the Website in an article entitled *10 New Restaurants to Visit on Your Next Trip to Miami*. See <https://thepointsguy.com/2016/09/new-restaurants-in-miami/> (the "Article"). A True and correct screenshot of the Article featuring the Photograph is attached hereto as Exhibit B.

16. Advertisements are featured prominently above and around the Photograph featured on the Website.

17. Defendant did not license the Photograph from Plaintiff for its Website or any other use.

18. Defendant did not have Plaintiff's permission or consent to publish the Photograph on its Website.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST TIME OUT)
(17 U.S.C. §§ 106, 501)

19. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-19 above.

20. Defendant infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Defendant is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

21. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

22. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

23. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

24. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant TPG be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Defendant TPG be ordered to remove the Photograph from its Website;
3. That, with regard to the First Claim for Relief, Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;

4. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
March 15, 2018

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